

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1436 of 2010

N.Madheswaran

... Appellant

Vs.

1.P.Jayapal

2.R.Periasamy

3.United India Insurance Company Limited,
Divisional Office,
2, Dr.Sankaran Road,
Namakkal, Namakkal District.

4.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Mettupalayam Road,
Coimbatore - 641 043.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.11.2009 made in M.C.O.P.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

For Appellant : Mr.E.Durai Vaiyapuri
for Mr.N.Manoharan

For R3 : Ms.I.Malar
for Mr.T.Ravichandran

WEB COPY
J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.11.2009 made in M.C.O.P.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

2.The appellant is the claimant inM.C.O.P.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode. He filed the above said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.07.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.1,52,620/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident the appellant sustained fracture of femur and multiple grievous injuries and P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.A15/disability certificate to that effect. The Tribunal has not awarded any amount towards pecuniary and non-pecuniary damages. The appellant was working as TNSTC Bus Driver and was earning a sum of Rs.8,000/- per month and the Tribunal has not awarded any amount towards loss of income. The appellant has taken treatment in the LKM Hospital, Erode as in-patient from 01.08.2007 to 15.08.2007 and a surgery was conducted on 02.08.2007 and he took bed rest for six months. Due to the injuries sustained by him in the accident, he could not able to continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation towards loss of earning capacity. The Tribunal has not awarded any amount towards mental agony, physical discomfort and expectation of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal has awarded a sum of Rs.1,00,000/- towards disability, which is excessive. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The Tribunal considering entire materials on record, has awarded a sum of Rs.1,52,620/- as compensation to the appellant, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent- Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained fracture of femur and multiple grievous injuries all over his body. To prove the same, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.A15/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.A15/disability certificate, has awarded a sum of Rs.1,00,000/- towards disability, which is not meagre. Therefore, he is not entitled to any enhancement towards disability. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method.

9. It is the contention of the appellant that he was working as TNSTC Bus Driver and was earning a sum of Rs.8,000/- per month. Due to the injuries sustained by him in the accident, the appellant has taken treatment in the LKM Hospital, Erode as in-patient from 01.08.2007 to 15.08.2007 and a surgery was conducted on 02.08.2007. The appellant has not proved that he lost his income during the treatment period. Therefore, he is not entitled to any amount towards loss of income. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and the same are enhanced to Rs.10,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes. Therefore, the appellant is entitled to a sum of Rs.10,000/- each towards attendant charges and loss of amenities and a sum of Rs.1,000/- towards damages to clothes. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000/-	1,00,000/-	Confirmed
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed

3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportation	2,000/-	5,000/-	Enhanced
5.	Medical expenses	35,620/-	35,620/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
8.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.1,52,620/-	Rs.1,81,620/-	Enhanced by Rs.29,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,52,620/- is hereby enhanced to Rs.1,81,620/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

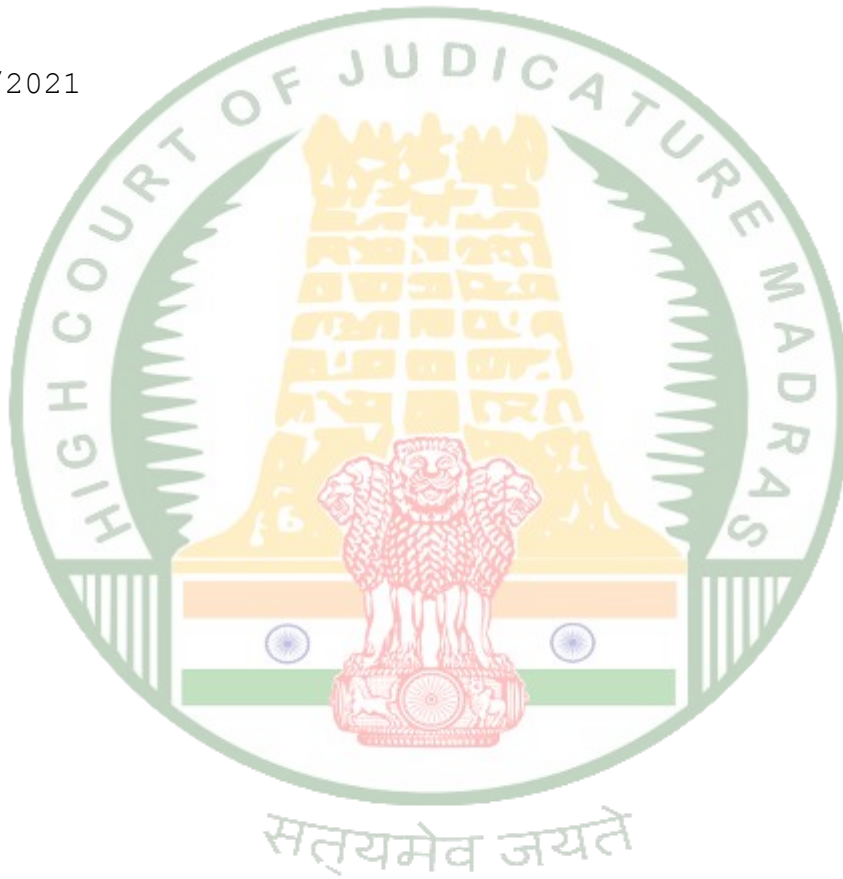
1. The I Additional District Judge,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.T.Ravichandran, Advocate Sr.20494
+1cc to Mr.N.Manokaran, Advocate Sr.20931

C.M.A.No.1436 of 2010

ssv[co]
srg 04/01/2021



WEB COPY